

DRAFT

January 26, 1998

PGP Proposal for a 'Slice of the System'

Introduction

This document has been prepared to set out some of the major legal considerations which should be taken into account when reviewing the PGP Proposal for a "Slice of the System". The Slice proposes sale of Federal resource capability from the system which is new and different from a sale of power. If needed, a more fully developed annotated outline may be prepared in the future.

Legal Considerations

1. Slice proposal's consistency with BPA mission. Bonneville is the Congressional designated marketing agent for the Federal system in the Northwest. This responsibility is established in Bonneville's enabling statutes and under secretarial orders. Only a Federal agency may carry out the duties of a Federal mission established by Congress and the Executive branch, it may not be delegated to nonfederal parties.
2. Bonneville's enabling statutes include the statutes for The Grand Coulee Dam - Third Powerhouse Act which integrates the all Federal power operations and projects in the Pacific Northwest into one single Federal system.
3. Bonneville has the legal obligation to provide security to the U.S. Treasury for the Federal debt on the Federal Columbia River Power System or FCRPS (\$8 billion). This obligation is also established in Bonneville's enabling statutes and is based on the market availability of the entire FCRPS. Bonneville's repayment obligation takes the form of substantial interest and capital payments each year.
4. Bonneville has the legal obligation to provide security for the Supply System Bonds (\$8 billion). Bonneville in its Supply System Bonds financial documents has made legal commitments to repay these bonds based on market availability of the entire FCRPS. Bonneville can not reduce its debt coverage ratio without jeopardizing its credit ratings.

5. Bonneville has to fulfill its U.S. and Canadian Treaty obligations as half of the U.S. Entity. These treaty obligations which include return of the capability to Canada are implemented through Entitlement Agreements with both the Mid-Columbias and Canada. These obligations are based on the availability of the entire FCRPS to meet them.
6. The Corps of Engineers and the Bureau of Reclamation are required through the dam authorization acts to operate the Federal dams for multiple purposes, not just for power production. This requirement is acknowledged in Section 15 of the Pacific Northwest Coordination Agreement.
7. Bonneville has environmental obligations which are established by statute which require review of all actions that have potential impact on the environment. Bonneville also has the legal responsibility set forth by statute for the protection of fish and wildlife affected by the Federal projects.
8. Bonneville is authorized to sell federal power under the Bonneville Project Act and the Northwest Power Act. Under the Bonneville Project Act, Congress authorized BPA to sell "electric energy" which was excess to the needs of the project and made available to the Administrator. Under the Northwest Power Act section 5, BPA was authorized to sell "electric power" which is defined by that Act as electric energy, capacity or both.
9. Bonneville is not authorized to sell resource capability of a federal resource but sells system power as those terms are generally understood in the industry.
10. BPA is directed to make the most efficient use of the federal system in making its power sales and meeting its federal purposes. BPA is not authorized to sell power in a manner which degrades the federal system capability available to BPA for meeting BPA's firm power load obligations.
11. BPA's public customers have a statutory assurance that BPA will have available all of the Federal Base System, as defined in the Northwest Power Act, and use it to meet ALL public preference customers regional firm load obligations.
12. BPA must make power sales consistent with the purposes of no monopolization of federal power by any one customer or group and widest possible use. BPA is not authorized to provide a portion of its FBS capability for the sole use by a single customer or group of customers regardless of the customer class. Were BPA to make such a sale, it may be unable to meet the statutory obligations described in section 5(b) above by doing so.

13. Under section 5 of the Northwest Power Act, customers have the right to buy power, "electric energy and capacity", made available to BPA from the Federal system. Congress has directed that BPA make full use of the Federal base system to meet all of its preference obligations under the Northwest Power Act. If federal system capability is sold for the exclusive use of a nonpreference customer, this directive may be frustrated.

14. Section 7(g) of the Northwest Power Act requires that the Administrator equitably allocate to power rates the following non-exclusive list of costs: conservation, fish and wildlife, uncontrollable events, reserves, excess costs of experimental resources, billing credits, operating services and the ability or inability to sell excess power. To the extent these costs, or any other costs (such as residential exchange costs, purchase power costs, etc.), were previously allocated to PF customers, and the Slice purchasers argue that the costs are not applicable to the Slice, there will be a cost shift because the costs that were previously paid by the entire PF rate class (including the current Slice purchasers) would now be paid by a smaller PF rate class (PF purchasers less the Slice purchasers) thereby increasing the rate for the remaining PF purchasers.

15. Further, the Slice proposal will affect the calculation of BPA's rates. Under Slice, purchasers receive part of the federal system output; firm power, surplus firm power, and non-firm, if any. They pay a part of BPA's revenue requirement, minus some specific costs, for example, costs associated with power marketing and some new expenditures. In order for the rate directives to work, the Slice load must be defined as PF load and all the costs of the resources allocated to serve that load (including exchange resource costs) must be paid by the Slice purchasers. The specific costs associated with, for example, power marketing and some new expenditures, however, would be reallocated to non-Slice firm power, including non-Slice PF, IP and GPS loads. This reallocation of costs away from the Slice purchasers will result in different outcomes of the TP-PF link calculation, the DSI floor rate test, and the 7(b)(2) rate test than if the original Slice reallocation of costs had not occurred. Simply put, different starting points result in different outcomes. These different outcomes shift costs between rate classes.

16. If some time in the future the federal hydro system becomes more valuable in relation to the west coast power market, the full benefit of market based sales will not go to the regional ratepayers because the Slice purchasers will have taken some of the benefits at the cost of production. Resulting in rates to non-Slice purchasers that may be higher than they would have been otherwise. These different outcomes could shift costs between rate classes.

17. If BPA were to offer a "Slice" product would the compensation for the product go through a Northwest Power Act section 7(i) proceeding and be

adopted as a rate? Discussions suggests that the payment would be made as a lump sum percentage of the costs of the system and not as a rate applicable to power or services sold. If it is not a rate is the sale of the product consistent with section 7(a)?